IN THE UNITED STATES DISTRICT COURT FOR MARYLAND

STEVEN A. SILVERS	*	Case 2006-2658-WMN
Plaintiff	*	U.S. District Court for the Southern District of Florida
v.	*	West Palm Beach
GOOGLE, INC.	*	
Defendant	*	Case # 05-80387-CIV-RYSKAMP/VITUNAC

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RESPONSE TO STELOR MOTION TO COMPEL

Lindsey Miller, through undersigned counsel, Michael C. Worsham, Esq., responds to the Motion to Compel filed in the above Florida-based federal lawsuit by Stelor Productions, Inc., and states:

1. This Court issued an Order on November 29, 2006 denying Miller's Motion to Quash, and ordering Miller to comply with the subpoena "within 10 days of the date of this order."
2. Stelor did not attempt to depose Miller within the 10 day deadline ending December 9, 2006.
3. Stelor never attempted to contact Miller's attorney to schedule a deposition of Miller, either in the instant case, or the Maryland state court suit. Miller and her counsel thus presumed Stelor had abandoned its intent to depose Miller, and accordingly did not file an appeal of this Court's Order denying Miller's Motion to Quash.
4. Miller has no responsive documents to the subpoena served on her by Stelor.
5. Suddenly on December 11, 2006, and still without any contact with counsel for Miller, Stelor's Florida counsel admitted *pro hac vice* in this case filed a Notice of Deposition via the Court's ECF system. This violates this Court's specific Local Rule that discovery materials are not to be filed with the Court. Local Rule 104(5). This December 11 filing was the first notice to Miller's counsel of this proposed deposition on December 19, 2006, just 8 days later, as the certificate of service on these discovery documents served by Stelor (improperly) with the Court clearly demonstrates, showing that Miller's counsel was not served previously.
6. On December 12, 2006, the very next day, undersigned counsel promptly mailed the Notice to Ms. Miller, who does not have a fax machine or email at her home, and was out of the

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state of Maryland the entire week of December 11, 2006.

7. As counsel's December 14, 2006 e-mail to Stelor's Florida counsel indicated, counsel flew out of Maryland for another case on the afternoon of December 14, 2006 and did not return until late Sunday December 17, 2006. A copy of that travel itinerary is enclosed.

8. Counsel's December 14, 2006 e-mail advised Stelor's counsel that he should not plan to come to Maryland on December 19, 2006, and why: because Stelor did not comply with this Court's November 29, 2006 Order and 10 deadline, a fact not really acknowledged in Stelor's Motion. Additionally, there is a conflict with the Florida counsel for Steven Silvers.

9. Stelor's Florida counsel (Mr. Kaplan) advised in a voice mail that Stelor's Maryland counsel, Steven Sturgeon, is no longer counsel for Stelor, although no withdrawal been filed in either the instant case or the Maryland state court case. This a demonstrates the problem raised by Stelor's Exhibit A, a Notice of Deposition of Ms. Miller for this date, time and place as the Florida case for which Stelor moves to compel her deposition in this Court. Stelor's Florida counsel (Mr. Kaplan) is admitted *pro hac vice* in the instant case, but not the Maryland state court case. Mr. Kaplan can not appear in the State Court case, and should not appear in the instant case if his original sponsoring attorney, Stephen Sturgeon, is not longer counsel or to be present during the deposition. The ECF filing of discovery materials demonstrates the need for local sponsoring counsel familiar with the local rules to be active in the case.

10. Also, Ms. Miller has filed both a Motion to Dismiss and Motion for Protective Order in the Maryland state court case *Stelor Productions, LLC v. Lindsey R. Miller*, Case # 272024-V which are pending. Ms. Miller will not appear for the Maryland state court deposition (Stelor's Exhibit A) until after her Motion to Dismiss is heard or absent an Order from the Montgomery County Circuit Court of compelling her to appear. The Circuit Court early on granted Ms. Miller's Motion for a More Definite Statement, indicating at least some level of concern over the viability of Stelor's state court case against her. Stelor's Motion at page 3-4 mixes the state and federal court cases up or treats them as if they are the same. Stelor should not use the Florida case to depose Miller in the state court case. Stelor cannot do so

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with Florida counsel not admitted to Maryland, which is the case with Mr. Kaplan.

11. Miller requests that the Court deny Stelor's Motion to Compel. If the Court decides the grant the Motion, it should impose the following conditions:

1. Stelor should contact Miller's counsel a reasonable period of time prior to scheduling any deposition date. Stelor should also contact counsel for Steven Silvers, the plaintiff in the underlying Florida suit.

2. The deposition date should be re-scheduled for a mutually agreeable date for all counsel.

3. Stelor should be required to clarify the status of its original sponsoring attorney in this case, Stephen Sturgeon, and be required to have local counsel review future filings and be present for any deposition.

4. Stelor shall not use the deposition in the instant case to take discovery in the Maryland state court suit it has filed against Lindsey Miller, Case # 272024-V.

WHEREFORE Lindsey Miller requests that the Court deny Stelor's Motion.

Respectfully submitted,

Michael C. Worsham

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CERTIFICATE OF SERVICE

I certify on December 18, 2006 a copy of this Response was served by the Court's ECF system on:

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